he holds is land situated within the control of the court.[32] Where the hands of the administrator are empty, either through his misconduct or because he has accounted to the court which appointed him[33] and has been discharged, there being no trust *res*, it is evident that no ground remains for holding the administrator a trustee. Without attempting, however, to justify their position by any such theory, the courts, in order to afford a remedy[34] or prevent a total failure of justice,[35] have boldly entertained suits against foreign administrators.[36] This tendency is well illustrated by the recent case of *Cutrer* v. *State of Tennessee* (Miss. 1911) 54 So. 434, in which an administrator, having received his letters from a Tennessee court, obtained a sum of money in that State and then, removing it to Mississippi, squandered the entire fund. In an equity action against the administrator and his bondsmen the question of the jurisdiction was squarely presented to the court, but although no theory of trust law could be invoked because no assets remained, and although, as was pointed out in the dissenting opinion, the action was for a money judgment alone, the court nevertheless held that to prevent a total failure of justice it would not refuse to hear the cause. While plainly in contravention of the broad rule originally recognized, this decision did not conflict with the spirit of the modern authorities and would seem to be justified by its results.

THE RIGHT TO IMMUNITY FROM WRONGFUL PUBLICITY.—The conception of a right of privacy, though of very recent origin,[1] has already received the sanction of so many judges that it cannot be dismissed as a mere ephemeral theory.[2] Though not passed upon by a court of record prior to 1891,[3] many earlier cases contained elements involving the existence of such a right, and in spite of the fact that the decisions

[32]Clopton *v.* Booker (1872) 27 Ark. 482; see McNamara *v.* Dwyer (N. Y. 1838) 7 Paige 239.

[33]See Ordronaux *v.* Helie (N. Y. 1846) 3 Sandf. Ch. *512, 519.

[34]Johnson *v.* Jackson *supra.*

[35]McNamara *v.* Dwyer *supra;* Colbert *v.* Daniel (1858) 32 Ala. 314, 331; Atchison's Heirs *v.* Lindsey (Ky. 1845) 6 B. Mon. 86.

[36]See Lake *v.* Hardy (1876) 57 Ga. 459, 467.

[1]The first definite presentation of the idea in our legal history seems to have been in a very able article in 4 Harv. L. Rev. 193. It was, however, well recognized in the Roman Law, and is embodied in the law of France to-day.

[2]This doctrine has, however, been rejected in Henry *v.* Cherry (1909) 30 R. I. 13, and in Roberson *v.* Folding Box Co. (1902) 171 N. Y. 538. The latter case, however, resulted in a statute declaring the existence of such a right. Laws of N. Y. 1903, c. 132, p. 308. It has also been discountenanced in Atkinson *v.* Doherty (1899) 121 Mich. 372, although that case, like that of Schuyler *v.* Curtis (1895) 147 N. Y. 434, only decided that a right of privacy dies with the person, and does not descend as an asset to his representative. For a partial list of contrary decisions see note 16 *infra.*

[3]Though the point was involved in the unreported case of Manola *v.* Stevens in 1890, the first reported cases seem to be Special Term decisions of the New York Supreme Court in 1891: Schuyler *v.* Curtis, 27 Abb. N. C. 387, overruled in 147 N. Y. 434 *supra,* and Mackenzie *v.* Soden Mineral Springs Co. 27 Abb. N. C. 402.

were rested upon other grounds it seems fairly inferable that some such idea was a factor in the minds of the courts. The need of such a principle arises from man's instinctive demand to live his own life free from undue interference from others; and while natural justice is no longer a ground on which decisions are expressly based,[4] it has the greatest influence in moulding legal and equitable principles into shape to fit new sets of facts.[5] The courts in these early cases, however, bound down by conservatism, were often forced to the point of obviously straining recognized principles in order to grant relief; for as this right of privacy has usually been invoked, or the need of it felt, in suits for an injunction, equity, conceiving that it could not act unless a breach of trust or confidence or a question of property were involved, has usually either refused relief[6] or has worked out one of these elements, however illogical in some cases the process may have been.[7] In certain decisions, however, which grant relief professedly on the ground of breach of trust or confidence, it is so difficult to discover these elements, and so apparent that the controlling factor was really the court's desire to protect the plaintiff's right of privacy irrespective of any confidential relation between him and the defendant, that a conclusion refusing to recognize this right, even in a case involving no such relation, would seem an inconsistency. Similarly, in the case of a private letter devoid of all pecuniary value, when it is held that the writer has given a property to the addressee for the purposes of reading and keeping it, and yet that the gift is so restricted as to leave a property in the sender for all other purposes,[8] it is hard to discern in this residuary "property" anything more than an indirect recognition of the right of privacy, and such also seems to be the explanation of the holding that one has a "property" right in his name.[9] It is true, indeed, that in many cases the property right upon which the decision was rested was actually clearly present as well as the right of privacy.[10] Thus if it is fair to conceive of the elastic term "property" as the possession of rights exercisable in the enjoyment of that which is susceptible of some pecuniary value, however slight, it would seem that the unauthorized use of a personal likeness for purposes of profit is an invasion both of property[11] and of privacy. Such

[4] 1 Pomeroy, Eq. Jur. § 57.

[5] As witness the cases decided under the influence of Lord Mansfield.

[6] Clark *v.* Freeman (1848) 11 Beav. 112; Dockrell *v.* Dougall (1898) 78 L. T. [N. S.] 840.

[7] Gee *v.* Pritchard (1818) 2 Swanst. 402; Yovatt *v.* Winyard (1820) 1 Jac. & W. 393; Folsom *v.* Marsh (1841) 2 Story C. C. 100; Pollard *v.* Photographic Co. (1888) L. R. 40 Ch. Div. 345.

[8] Pope *v.* Curl (1741) 2 Atk. 342; Folsom *v.* Marsh *supra;* Gee *v.* Pritchard *supra;* 2 Story, Eq. Jur. (13th ed.) §§ 946-948.

[9] See Edison *v.* Edison Polyform Mfg. Co. (1907) 73 N. J. Eq. 136; Maxwell *v.* Hogg (1867) L. R. 2 Ch. 307; Brown Chemical Co. *v.* Meyer (1891) 139 U. S. 540; Mackenzie *v.* Soden Mineral Springs Co. *supra.*

[10] It is well established that productions of the mind are in every sense property, and protection as such is accorded to the thoughts themselves rather than the substance upon which they are communicated. Queensberry *v.* Shebbeare (1758) 2 Eden C. 329; Woolsey *v.* Judd (N. Y. 1855) 4 Duer 379; Abernethy *v.* Hutchison (1825) 3 L. J. Ch. 209; Caird *v.* Sime (1887) L. R. 12 App. Cas. 326.

[11] Corliss *v.* Walker (1894) 64 Fed. 280.

was the decision in the recent case of *Munden* v. *Harris* (Mo. 1911) 134 S. W. 1076, which further upheld the existence of the latter right as a right entitled to protection at law and in equity. But though the two elements may often be involved in the same case, they should be carefully distinguished, and it seems clear that privacy itself can under no view be classed as property, unless the startling conception be adopted that every right is within the scope of that term.[12]

It becomes necessary, then, to determine whether, as held in the principal case, this right of privacy exists upon common law principles as a legal personal right. It seems fair to argue that it should be embraced within the guarantee of personal security, which includes the right to the enjoyment of life, and is invaded by a deprivation of those privileges and immunities which are reasonably necessary to such enjoyment according to the temperament of the individual.[13] The common law liabilities imposed upon scolds and eavesdroppers[14] seem possibly to spring from a similar right to quiet and repose, and an analogy may also be found in the law of libel, for apart from damage in a business or professional sense, an injury to reputation in the last analysis is purely one of sentiment. It seems, then, that there is inherent in our jurisprudence a personal right in the nature of a right to privacy, whose recognition contravenes no policy of the law. Furthermore, in view of the strong tendency of equity in certain classes of cases to entertain questions involving neither property nor breach of trust,[15] it would seem that this right should be entitled to the protection of equity in the rare cases when no legal remedy could be had. But the doctrine of an absolute right to privacy, if adopted without qualification, would evidently result in prohibiting acts long recognized as lawful, and not intended to be embraced within it, and it would conflict to a very great extent with the principle of liberty of speech and of the press.[16] If, however, the right were less broadly stated as an "immunity from wrongful publicity," these difficulties would largely be obviated; the line of demarcation in determining what should constitute the wrong would be ascertainable as readily as it is in cases involving negligence and reasonable user; and the sound distinction betwen men who have waived their immunity by entering on a public life, and those whose mode of life is a private one, would be not only preserved but accentuated.

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[12]Dixon *v.* Holden (1869) L. R. 7 Eq. 488; Schuyler *v.* Curtis (1895) 147 N. Y. 434, dissenting opinion.

[13]Pavesich *v.* Insurance Co. (1905) 122 Ga. 190.

[14]4 Bl. Com. 168.

[15]Note 7 *supra;* see also Snell, Principles of Equity (1st Am. ed.) 501; 1 Pomeroy, Eq. Jur. § 1354; Farina *v.* Silverlock (1856) 6 De G. M & G. 213; Pierce *v.* Proprietors (1872) 10 R. I. 227; Routh *v.* Webster (1847) 10 Beav. 561; Loog *v.* Bean (1884) L. R. 26 Ch. Div. 306. Note the language used by Lord North in Pollard *v.* Photographic Co. *supra,* at p. 354, and by Lord Cottenham in Walworth *v.* Holt (1841) 4 Myl. & C. 619, 635.

[16]This is recognized in Pavesich *v.* Insurance Co. *supra;* Corliss *v.* Walker *supra;* Edison *v.* Edison Polyform Mfg. Co. *supra;* Foster-Milburn Co. *v.* Chinn (1909) 134 Ky. 424, a list which includes all the cases in courts of last resort squarely recognizing the right of privacy.